

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

JOSEPH R. BANISTER,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant.

03:06-CV-00061-LRH-RAM

ORDER

Presently before the court is the United States of America's Motion to Dismiss (# 6<sup>1</sup>). No opposition has been filed.

On February 3, 2006, Joseph Banister ("Banister") filed a Petition for Expedited Declaratory Judgment. Banister filed his petition following his receipt of a Notice of Deficiency from the Internal Revenue Service. Banister is seeking a determination as to whether he is a taxpayer within the meaning of 26 U.S.C. § 7701(a)(14). At this time, the Government is seeking to dismiss the action for lack of subject matter jurisdiction.

Banister brought this action seeking declaratory judgment as to his status as a taxpayer. According to the petition, this court has federal question jurisdiction pursuant to 28 U.S.C. § 1331. However, "[t]he Declaratory Judgment Act, 28 U.S.C. s 2201, does not itself confer federal subject

---

<sup>1</sup>Refers to the court's docket number.

1 matter jurisdiction.” *Fidelity & Cas. Co. v. Reserve Ins. Co.*, 596 F.2d 914, 916 (9th Cir. 1979)  
2 (citing *Skelly Oil v. Phillips Petroleum*, 339 U.S. 667 (1950)). In this case, Banister has failed to  
3 properly allege a statute under which the United States has waived its sovereign immunity and  
4 consented to be sued. *See United States v. Shaw*, 309 U.S. 495, 500-01 (1940) (“[W]ithout specific  
5 statutory consent, no suit may be brought against the United States.”) Therefore, Banister has failed  
6 to show that this court has jurisdiction over this action.

7 Moreover, the Declaratory Judgment Act specifically exempts Declaratory Judgments “with  
8 respect to Federal taxes other than actions brought under section 7428 of the Internal Revenue code  
9 of 1986.” 28 U.S.C. § 2201; *Hughes v. United States*, 953 F.2d 531, 536-37 (9th Cir. 1992). The  
10 case at bar does, in fact, seek a declaratory judgment “with respect to Federal taxes.” Because  
11 Banister seeks a declaratory judgment “with respect to Federal taxes” and has failed to show that  
12 this court has subject matter jurisdiction, the court will dismiss this action.

13 IT IS THEREFORE ORDERED that the United States of America’s Motion to Dismiss (#  
14 6) is hereby GRANTED.

15 The Clerk of the court shall enter judgment accordingly.

16 IT IS SO ORDERED.

17 DATED this 27<sup>th</sup> day of November, 2006.



20 LARRY R. HICKS  
21 UNITED STATES DISTRICT JUDGE  
22  
23  
24  
25  
26